

FILED  
IN COMMON PLEAS COURT

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2013 JAN 31 PM 3:04  
**IN THE COURT OF COMMON PLEAS  
GEAUGA COUNTY, OHIO**

DENISE M. KAMINSKI  
CLERK OF COURTS  
STATE OF OHIO  
GEAUGA COUNTY

: CASE NO: 12C000058

Plaintiff

:

JUDGE DAVID L. FUHRY

-vs-

:

THOMAS M LANE III

: **ORDER OF THE COURT**

(Re: Reply to State's Response to

Defendant

: Defendant's Motion in Limine)

This matter came on for consideration upon the State's Response to Defendant's Motion in Limine filed (under seal) January 28, 2013, and upon the Court's own motion incident to the Attorney/Court Conference conducted January 30, 2013.

**THE COURT FINDS THAT** that the defense, at the conference, requested an opportunity to Reply to the State's Response.

On consideration, the Court finds the defense should be, and is hereby, granted the opportunity to reply to the State's Response. Such reply shall be submitted no later than March 11, 2013, unless an extension is granted on good cause.

On further consideration, the Court adds to the record that at the conclusion of the aforementioned Attorney/Court conference the parties were afforded an opportunity to place any matter upon the record. The parties declined to do so.

**IT IS SO ORDERED.**

  
\_\_\_\_\_  
DAVID L. FUHRY, JUDGE

cc: Prosecutor ✓  
Mark DeVan, Esq. ✓  
Ian Friedman, Esq. ✓  
Anne Walton, Esq. ✓  
Victims' Assistance ✓  
Thomas M. Lane III ✓  
c/o GCSO

sb

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FILED  
IN COMMON PLEAS COURT

2013 JAN 31 PM 3:10 IN THE COURT OF COMMON PLEAS  
GEAUGA COUNTY, OHIO

DENISE M. KAMINSKI  
CLERK OF COURTS  
GEAUGA COUNTY  
STATE OF OHIO

: CASE NO: 12C000058

Plaintiff

:

JUDGE DAVID L. FUHRY

-vs-

:

THOMAS M LANE III

: **ORDER OF THE COURT**  
(Regarding Venue)

Defendant

:

This matter came on for consideration on Defendant's Supplement to Defendant's Motion for Change of Venue and Motion to Reconsider. The Motion to Reconsider is aimed at the Court's September 14, 2012 Ruling deferring a decision on the Defendant's Motion for Change of Venue until an attempt to obtain a fair and impartial jury through the *voir dire* process is made. Defendant further requests an oral hearing.

The State Responded to the Supplement to Motion for Change of Venue and Motion to Reconsider.

**THE COURT FINDS** the filings of the parties sufficient such that no oral hearing is necessary and request for one is therefore **denied**.

**FURTHER FOUND THAT** the Supplement submitted in support of the Motion that the Court reconsider and grant the motion to change venue is **not well taken**.

A substantial community awareness of the case is not surprising. "... in our current era of high-speed and portable internet access ... Newspapers and other news media now have the ability to update their print stories online throughout the day and they may be accessed at the click of a button. Thus, not surprisingly, the cases cited by appellant [who unsuccessfully challenged denial by the trial court of his motion to change venue prior to *voir dire*], especially those from the 1960s and 70s, involve far fewer media reports. However, the sheer number of media reports is an inescapable result of modern technology." *State v. Noe*, 2009 WL 5174163 (Ohio App. 6 Dist.).

Further, the fact that many residents may have preconceived notions does not presume prejudice which would justify a change of venue pre-*voir dire*: "In these days

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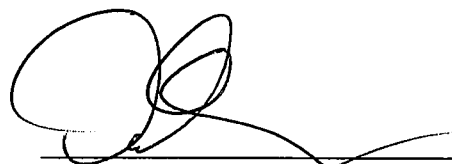
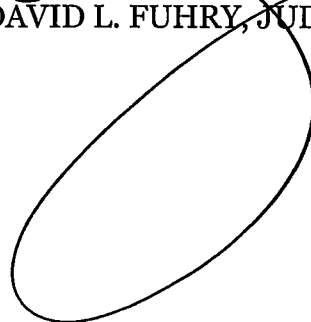
of swift, widespread and diverse method of communication, . . . scarcely any of those best qualified to serve as jurors will not have formed some impression or opinion as to the merits of the case." *State v. Lundgren*, 73 Ohio St. 3d 474 at 479, quoting *Irwin v. Dowd*, (1961), 366 U.S. 717 at 722. The *Lundgren* court affirmed the trial court's denial of a motion to change venue on a presumed prejudice basis. A jury was thereafter successfully seated.

The Supreme Court of Ohio has held that cases of presumed prejudice are rare. See *Lundgren*, supra. As noted in *State v. Yarborough*, "[t]he examination of jurors on their *voir dire* affords the best test as to whether prejudice exists in the community against the defendant, and whether it appears that opinions as to the guilt of the defendant of those called for examination for jurors are not fixed but would yield readily to evidence, it is not error to overrule an application for a change of venue, in absence of a clear showing of an abuse of discretion". *Yarborough*, 95 Ohio St. 3d 227 at 241, quoting *State v. Swiger* (1966), 5 Ohio St. 3d 151, paragraph one of the syllabus.

Responses of members of the community at large polled about their attitudes prior to being placed under oath and advised or reminded of concepts such as the presumption of innocence and burden of proof are not always very reliable indicators of predicting the result of a *voir dire* effort.

The Motion to Reconsider the Court's prior ruling with respect to change of venue is ordered **denied**.

**IT IS SO ORDERED.**

  
\_\_\_\_\_  
DAVID L. FUHRY, JUDGE  


cc: Prosecutor ✓  
Mark DeVan, Esq. ✓  
Ian Friedman, Esq. ✓  
Anne Walton, Esq. ✓  
Victims' Assistance ✓  
Thomas M. Lane III ✓  
c/o GCSO

sb

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FILED  
IN COMMON PLEAS COURT

2013 JAN 31 PM 3:03

IN THE COURT OF COMMON PLEAS  
GEAUGA COUNTY, OHIO

DENISE M. KAMINSKI  
CLERK OF COURTS  
STATE OF OHIO  
GEAUGA COUNTY

: CASE NO: 12C000058

Plaintiff

:

JUDGE DAVID L. FUHRY

-VS-

:

THOMAS M LANE III

: **ORDER OF THE COURT**

Defendant

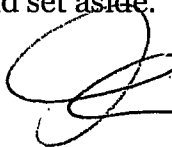
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This matter came on for consideration on the Court's own motion incident to the recent cancellation of the trial that was set for January 14, 2013.

**THE COURT FINDS THAT** as part of that proceeding i.e. traditional *voir dire* was to take place in the Chardon Municipal Court on February 4, 2013. The Chardon Municipal Court had, on December 18, 2012, been deemed to serve as the Geauga County Court of Common Pleas for that day.

In light of the cancellation of the trial, the Court orders that its designation of the Chardon Municipal Court to serve in the place of Courtroom A, Geauga County Court of Common Pleas is hereby rescinded and set aside.

**IT IS SO ORDERED.**



DAVID L. FUHRY, JUDGE

cc: Prosecutor ✓  
Mark DeVan, Esq. ✓  
Ian Friedman, Esq. ✓  
Anne Walton, Esq. ✓  
Victims' Assistance ✓  
Thomas M. Lane III ✓  
c/o GCSO  
Chardon Municipal Court ✓

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FILED  
IN COMMON PLEAS COURT  
2013 JAN 31 AM 8:54

IN THE COURT OF COMMON PLEAS  
GEAUGA COUNTY, OHIO

DEBIE M. KAMINSKI  
STATE OF OHIO  
GEAUGA COUNTY

: CASE NO: 12C000058

Plaintiff

:

JUDGE DAVID L. FUHRY

-VS-

:

THOMAS M LANE III

: **ORDER OF THE COURT**

Defendant

:

This matter came on for Court/Attorney Conference on January 30, 2013. Counsel agreed that given the state of the forensic analysis referred to in the Court's order of January 9, 2013, the effort to re-set a trial date should be postponed. The Court agrees.

The Court/Attorney Conference is hereby set for **Tuesday, February 26, 2013 at 9:30 a.m. Counsel and Defendant shall appear at that time.**

**IT IS SO ORDERED.**

DAVID L. FUHRY, JUDGE

cc: Prosecutor ✓  
Mark DeVan, Esq. ✓  
Ian Friedman, Esq. ✓  
Anne Walton, Esq. ✓  
Victims' Assistance ✓  
Thomas M. Lane III ✓  
c/o GCSO  
Sheriff ✓

sb

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